

AO 241 (Rev. 5/85)

H PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>1st District Massachusetts</u>
Name RAMON T. RODRIGUEZ	Prisoner No. W81152	Case No. OFFICE
Place of Confinement Bay State Correctional Ctr. - P.O. Box 73, Norfolk, Mass. 02056		
Name of Petitioner (include name under which convicted) RAMON T. RODRIGUEZ		Name of Respondent (authorized person having custody of petitioner) V. MICHAEL CORSINI
<div style="font-size: 2em; font-weight: bold; margin: 0;">05 10843 NMG</div>		
The Attorney General of the State of: TOM REILLY		
<div style="display: flex; justify-content: space-between;"> PETITION MAGISTRATE JUDGE <u>WHL</u> </div>		
<p>1. Name and location of court which entered the judgment of conviction under attack <u>Superior Court</u> <u>County of Plymouth - Massachusetts</u></p> <p>2. Date of judgment of conviction <u>December 17, 18, 2001</u></p> <p>3. Length of sentence <u>5 to 7 years with 5 years mandatory</u></p> <p>4. Nature of offense involved (all counts) <u>Indictment on two counts of distribution of a Class B controlled substance, to wit: cocaine (Ind. # 01-00386-001 and 01-00386003); two counts of distribution of ClassB, and subsequent offense (Ind. # 01-00386-002 and #01-00386-004) - One count of possession (Ind. 01-00386-005 and # 01-00386-004). Violation of Mass. General Laws c. 94C, §§32A and (d).</u></p> <p>5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: <hr/> </p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> (b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

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9. If you did appeal, answer the following:

(a) Name of court Appeals Court for the Commonwealth 2003-P-820(b) Result Judgments affirmed(c) Date of result and citation, if known October 21, 2004(d) Grounds raised During the Instructions, the date of the offense was wrong and the Court the judge mentioned prior offense occurred 6 years earlier.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court Supreme Judicial Court FAR Case No. 14652(2) Result Denied Further Appellate Review(3) Date of result and citation, if known March 30, 2005(4) Grounds raised Same as above - the instruction of the jury with wrong dates and making remarks of prior offenses.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court NONE

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court NONE

(2) Nature of proceeding _____

(3) Grounds raised _____

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NONE

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☐

NONE

(5) Result

(6) Date of result

NONE

(b) As to any second petition, application or motion give the same information:

(1) Name of court

NONE

(2) Nature of proceeding

NONE

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐No ☐

NONE

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.

Yes ☒No ☐

(2) Second petition, etc.

Yes ☒No ☐(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I filed proper appeal procedural in state court and I am moving now to the
 the federal court pursuant to 28 USC § 2254 for a writ of Habeas Corpus after
 I exhausted state remedies.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Denied the right of a fair trial. An error occurred during the instruction of the jury at the trial that made the entire trial fundamentally unfair in violation of the 14th Amendment.

Supporting FACTS (state *briefly* without citing cases or law) The trial Judge permitted that the jury receive a wrong information by creating other dates of the offense. The date of all three underlying offenses was May 20, 2001. In his instructions the jury, however, the court failed to ever reference this date. Instead, immediately prior to the trial on the second offense charges, the court made a single reference to "July 24, 2001," and in its charge it made three reference to "July 20, 2001," - Neither the prosecutor nor defense counsel corrected the court.

B. Ground two: Denied the right to a fair trial - The trial judge began with a confusing instructions by allowing dates of other offenses for the jury's view.

Supporting FACTS (state *briefly* without citing cases or law) Because jurors were being asked to decide whether the Petitioner had been previously found guilty of an earlier drug offense, accuracy regarding the dates of the alleged crimes is highly significant. As evidenced by their verdicts, in the instant case (which was heard in September, 2001), jurors clearly believed that the petitioner was guilty of two counts of dsitribution and one count of posse-ssion with intent to distribute on May 20, 2001, a date earlier than the July, 2001, dates later referenced by the trial court in its pre-and post-trial instructions.

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C. Ground three: NONESupporting FACTS (state *briefly* without citing cases or law) _____NONED. Ground four: NONESupporting FACTS (state *briefly* without citing cases or law) _____NONE

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

Those grounds listed in 12A and B was properly presented in State Court.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Attorney PAUL P. HAYES, JR., Esq.
Hayes & Hayes - 31 Newcourt Street
Quincy, Massachusetts 02169

(b) At arraignment and plea Same Attorney Hayes

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(c) At trial Attorney PAUL P. HAYES, Jr.,(d) At sentencing Att. PAUL D. HAYES Jr.,(e) On appeal Attorney Jennifer Petersen, Esquire
Petersen & Suchecki - 44 School St. (Sixth Floor
Boston, Massachusetts 02108(f) In any post-conviction proceeding Attorney Jennifer Petersen represented the
petitioner on post-conviction appeal, including the Supre Court.(g) On appeal from any adverse ruling in a post-conviction proceeding The same attorney filed the
last appeal FOR FURTHER APPELLATE REVIEW .

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A(b) Give date and length of the above sentence: NONE

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Ramon Rodriguez
Signature of Attorney (if any)
Petitioner Acting pro se

I declare under penalty of perjury that the foregoing is true and correct. Executed on

April 13, 2005

(date)

Ramon Rodriguez
Signature of Petitioner
Petitioner Acting pro se